

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FIRSTMERIT BANK, N.A., etc.,)	
)	
Plaintiff,)	
)	
v.)	No. 13 C 2252
)	
JOHN A. KEEFE, SR., et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

John Keefe, Sr., Betty Anne Keefe and John Keefe, Jr. (collectively "Keefes") have filed their Answer and Affirmative Defense ("AD") to the Complaint brought against them by FirstMerit Bank, N.A. ("FirstMerit"). This memorandum order is issued sua sponte to address two problematic aspects of that responsive pleading.

First, Keefes' counsel is simply wrong in failing to respond to Complaint ¶6 on the premise that the allegations there "constitute a legal conclusion." In that respect, see App'x ¶2 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001). Answer ¶6 is accordingly stricken, but with leave granted to admit the allegation in Complaint ¶6 (clearly no other response would be tenable) on or before June 17, 2013.

As for AD 1, it seeks to point to Illinois law as requiring that an action based on a guaranty cannot be pursued in a mortgage foreclosure action, so that this Court purportedly does not have subject matter jurisdiction over John Keefe, Jr. But

whether or not Illinois law so provides,¹ this is a federal court, with the permissible joinder of parties and claims being defined by the Federal Rules of Civil Procedure and by 28 U.S.C. §1367(a) and (b). Accordingly AD 1 will be stricken unless on or before the same June 17 date defense counsel provides some relevant authority for doing otherwise.



Milton I. Shadur
Senior United States District Judge

Date: June 6, 2013

¹ This memorandum order need not address that issue for the reason next stated in the text.